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UNITED STATES OF AMERICA

NATIONAL LABOR RELATIONS BOARD

REGION 20

CARPENTERS LOCAL 2236, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, Petitioner, and SQUIRES LUMBER COMPANY, INC., Respondent.	NLRB Case No. 20-CA-160279 **CHARGING PARTY'S CLOSING BRIEF** Date: February 22, 2016 Time: 9:00 a.m. Place: National Labor Relations Board E.V.S. Robbins Courtroom 901 Market Street, Suite 306 San Francisco, California

I. INTRODUCTION

The Charging Party, Carpenters Local 2236 ("Local 2236" or "Union" or "Charging Party"), joins the Brief of the General Counsel. However, the Charging Party files this Brief to add two issues to the theory of the case. First, the Charging Party seeks a broader remedy and second, the Charging Party provides an alternative theory that the unit is appropriate. These issues are discussed in turn.

II. ARGUMENT

The General Counsel's Brief outlines the facts in appropriate detail. The Union will therefore not repeat them in order to avoid burdening the record. This section provides the Union's authority for a more thorough remedy and for the alternative theory that the unit sought is an appropriate traditional craft unit.

A. BROAD NOTICE TO SQUIRES EMPLOYEES AND CUSTOMERS IS NECESSARY

This section argues for three additional remedies: a company-wide posting, a public notice to prospective employees and a public notice to Squires' customers.

Where violations are widespread or flagrant, the Board orders that notices be posted at all facilities, not just the facility where the violations occurred. *Beverly California Corp. v. NLRB*, 227 F.3d, 817 (7th Cir. 2000), *Miller Group*, 310 NLRB, 1235 (1993) holding that "*notice posting at the facility where the unfair practice did not occur justified by respondent's recidivist history, clear pattern of practice of unlawful conduct and centralized control of labor relations.*"

In the instant case, there can be no dispute that Squires engaged in a clear pattern of planned intentional unlawful conduct. Squires conducted its campaign by exercising centralized control of labor relations from its main facility in Carson, California. For instance, on September 10, 2015, Colton Yard Manager, Mauricio Vargas, and Labor Consultant, Ricardo Pasalagua, went to the Suisun City facility and met with temporary employees who were working that day. (TR 139-141) They read a statement that laid out the company's anti-union view. There was nothing in the statement that indicated that the anti-union view was limited to Suisun. (TR 139-141). On October 1, 2015, company President, Chris Paxson and Vice President Kyle Paxson

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introduced themselves as owners of the company and met with the direct and temporary millworkers. Kyle Paxson gave them a speech describing Respondent's anti-union position and proud history of defeating union organizing attempts at its Colton facility. (TR 214-216, 450-456, 670-674, G.C. Exh. 23)

Further, the record is replete with the Operations Manager, John Gilfillan, indicating that he could make no labor relations decisions and that he had to consult the managers at the Colton facility before any making any such decisions. See for example, GC Exh. 2 (Gilfillan tells Union organizer, Tim Lipscomb, that Lipscomb will not be dealing with Gilfillan but rather someone from the corporate office.) Gilfillan did not even have the authority to call the Sheriff. He had to get direction from Paxson to deal with the picketers. (TR 797, 809) When Gilfillan was dealing with Bobby Saephan's drug testing issue, Gilfillan had to "call corporate" before he could do anything regarding the closed drug testing facility. (TR 262-264, GC Exh. 15, Resp. Exh. 14)

Corporate-wide posting is appropriate where the violative behavior is corporate policy. In *Fresh and Easy Neighborhood Market*, 356 NLRB No. 145, (2011), enforced 468 F. App'x 1 (D.C. Cir. 2012), the Board ordered a corporate-wide internet posting on a handbook case.

> The Board's corporate wide remedies are not reserved only for recidivists. Such a remedy is permissible and necessary to ensure that all effective employees will be informed of the Respondent's violation and the nature of their rights under the Act.

Id. 356, NLRB No. 145 slip. op. at 2 (citing *Technology Services Solutions*, 334 NLRB 116 (2001)). Here, company policy is to avoid union organizing by violating the Act. A company-wide posting is appropriate.

The Charging Party seeks an additional remedy of public notice that is actually public. In *J. Picini Flooring*, 356 NLRB No. 9, slip. op. at 2 (2010) the Board determined that where employers communicate with their employees electronically, the standard notice posting should be made electronically. The General Counsel requests such a posting and the Charging Party joins in that request. However, two additional types of public notice are necessary in this case.

In cases where the employer has engaged in pervasive unfair labor practices, the Board orders a "public" reading of the Board's remedial notice. *Lytton Rancheria of California d/b/a*

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Casino San Pablo, 361 NLRB No. 148, slip. op. at 11 (2014) *citing Carey Salt Co.*, 360 NLRB No. 38, slip. op. at 2 (2014), *HTH Corp.*, 356 NLRB No. 182, slip. op. at 8 (2011), enforced 693 F.3d, 1051 (9th Cir. 2012). The reading is not actually to the "public." The Board requires the notice to be read to the employees of the employer by a Board Agent or by a representative of respondent. It is, in fact, a private reading. The employer is shielded from public embarrassment and future employees and customers have no idea of their rights or that they are supporting a lawbreaker.

In the case of severe violations, the Board will order a notice and an explanation of rights to be read to current employees and to new employees hired in the next three (3) years. *HTH Corp., Pacific Corporation and KOA Management dba Pacific Beach Hotel and International Longshore and Warehouse Union, Local 142*, 361 NLRB No. 65, slip. op. at 5-6. Here, the Charging Party acknowledges that Squires behavior is not as egregious as the employer's behavior in *HTH*. However, it would not effectuate the purposes of the Act to order a usual posting and hope it has the appropriate remedial effect. The usual posting is also flawed because it does not protect the rights of future employees.

It is undisputed that Squires does not hire directly. Therefore, in order to protect the rights of both current and future employees, the remedy should include a posting and reading of rights to all the current employees, permanent or not, and a posting at the temporary employment agencies that Squires uses in connection with its Suisun City operation. (TR 668-670, 900-903, TR 896 GC Exh. 19) The temporary millworkers have a high degree of turnover. (TR 668-670, 705, 739-740) Thus, in order to alleviate the long-term effects of Squires' unfair labor practices, it is necessary to post a posting at the temporary agencies and to require a reading of rights to all new temporary and permanent employees.

A truly public notice is also necessary. The remedy should include an order that Squires provide Region 20's Compliance Agent a list of all of the clients and customers it serviced out of the Suisun City operation since the beginning of the operation. The Region should notify those customers of the posting and of Carpenters Local 2236's right to picket, leaflet and otherwise protest at the customer's location anytime Squires is present. In *HTH/Pacific Beach*, 361 NLRB

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No. 65, the Board required a publication of the notice and explanation of rights in two local publications of broad circulation twice a week for a period of eight weeks. *Id.* slip. op. at 6 citing *Fieldcrest Cannon*, 318 NLRB 470, 473 (1995) enforced in relevant part 97 F.3d. 65 (4th Cir. 1996), *Three Sisters Sportswear Co.*, 312 NLRB 853, 854 (1993) enforced 55684 (D.C. Cir. 1995), Cert. denied 516 U.S. 1093 (1996).

> Where the violations are flagrant and repeated, the publication order has the salutatory effect of neutralizing the frustrating effects of persistent illegal activity by letting in a 'warming wind of information and more important reassurance.'

NLRB v. Union National De Trabajadores, 540 F. 2nd 1, 12 First Cir. 1976) quoting *J.P. Stevens Co. v. NLRB*, 417 F. 2nd 533, 538-540 4th Cir. (1972). Again, the Charging Party acknowledges that Squires' behavior is not as bad as the behavior in *HTH* but Squires' behavior is flagrant and repeated. A public posting to Squires' customers would effectuate the purposes of the Act by deterring future violations.

B. A TRADITIONAL CRAFT UNIT IS APPROPRIATE

The Charging Party joins the General Counsel in its single employer analysis regarding why the permanent millworkers constitute an appropriate bargaining unit. As the General Counsel points out, the millworkers and temporary employees are in different units because the temporary employees are jointly employed by Squires and temporary agencies while the millworkers are employed only by Squires, thus constituting a multi-employer bargaining unit, the creation of which is only permissible with the consent of both employers. *Oakwood Care Center*, 343 NLRB 659 (2004)

The Charging Party asserts an additional theory that in the unlikely event the temporary agencies permit Squires to bargain on their behalf, the permanent millworker unit would remain an appropriate unit apart from the temporary employees because it is a traditional craft unit.

The millworkers and the temporary workers do not share a community of interest. As direct employees, the millworkers receive their paychecks from Respondent rather than a temporary employment agency. They make leave requests to Respondent instead of the temporary agency. They receive a raise in pay from $12.00 to $13.00 an hour. They receive a new Employee Handbook and are eligible for Respondent's health and welfare benefits including

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a 401(k) plan, none of which is available to temporary millworkers. (TR 135, 183-185, 411-413, 421, 970-971) Unlike the temporary millworkers, they are subject to discipline from Respondent. (TR 686-687) The temporary millworkers have a high degree of turnover and work at Squires depending on the volume of work. They work various lengths of time, ranging from one or two days to several weeks. Permanent millworkers work full time and are not laid off due to lack of work. (TR 668-670, 705, 739-740, GC Exh. 19) Thus, under a traditional community of interest analysis, the temporary employees and the permanent millworkers do not share several of the basic elements of community of interest. They do not have the same wages, they have different employment benefits and their work schedules are different because they do not necessarily work full-time. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962)

In determining whether a Craft unit is appropriate, the Board follows six factors it developed in *Mallinckrodt Chemical Works*, 62 NLRB No. 48 (1966) slip. op. at 8-9. Although *Mallinckrodt* dealt with Craft severance, the Board in a companion case to *Mallinckrodt* held that the same factors would be applied to cases involving the appropriateness of establishing craft units at unorganized employers. *E. I. DuPont de Nemours & Co.*, 162 NLRB 413 (1966) The factors are 1) whether the unit consists of a distinct and homogeneous group of skilled journeyperson craftsmen performing their craft on a non-repetitive basis, 2) the history of collective bargaining, 3) the extent to which the employees in the proposed unit have established and maintained their separate identity, 4) the history and pattern of collective bargaining in the industry, 5) the degree of integration of the employer's production process, and, 6) the qualifications of the union seeking to represent those workers.

The proposed craft unit easily meets the first category. Francisco Martinez testified that the temporary workers are almost completely unskilled. The permanent millworkers show them what to do and then the temporary workers do the repetitive work. The millworkers can read blueprints and diagrams. This enables them to lay out the work and set up jigs. They also configure the saws in the appropriate method. The temporary employees do not do this work.

The second factor, the history of collective bargaining with the employees in question does not apply. The only history of collective bargaining with this employer is its admission that it fought unions off at its Colton facility. (TR 214-216, 450-456, 670-674, GC Exh. 23)

Third, the permanent millworkers have established and maintained their separate identify. They are permanent employees, they lead the temporary employees and they organized together as a Carpenter craft unit.

Fourth, the pattern and history of collective bargaining in the industry also supports a craft unit. Francisco Martinez testified that he was a member of the Union while doing the same kind of work at Channel Lumber. He testified that Channel Lumber has a collective bargaining agreement with the Carpenters Union.

Fifth, the degree of integration and dependence of the employer on the unit. The employer's production process is absolutely dependent on the skilled permanent millmen. The temporary employees cannot read diagrams, set up their equipment, create jigs or create templates. Without the skill to do those tasks, the company would not function and could not produce its products.

Sixth, the qualifications of the Carpenters to represent the millmen. Mr. Martinez testified, without contradiction, that he is a Carpenter and worked for many years as a Union Carpenter at Channel Lumber. He testified that the Union has been successful in negotiating collective bargaining agreements with Channel Lumber and other lumber yards. No one could reasonably dispute that the most qualified Union to represent the millmen is Carpenters Local 2236.

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III. CONCLUSION

The Charging Party therefore respectfully requests that the Administrative Law Judge issue findings consistent with this brief, and order the remedies discussed above.

Respectfully submitted,

Dated: March 31, 2016

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PROOF OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 428 J Street, Suite 520, Sacramento, California 95814.

On March 31, 2016, I served the within:

Carpenters Local 2236 v. Squires Lumber Company, Inc.
NLRB Case No. 20-CA-160279

CHARGING PARTY'S CLOSING BRIEF

[X] **BY MAIL:** I placed a true copy of each document listed herein in a sealed envelope, addressed as indicated herein, and caused each such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Sacramento, California. I am readily familiar with the practice of Weinberg, Roger & Rosenfeld for collection and processing of correspondence for mailing, said practice being that in the ordinary course of business, mail is deposited in the United States Postal Service the same day as it is placed for collection.

[ ] **BY FACSIMILE:** I caused to be transmitted each document listed herein via the fax number(s) listed on the attached service list.

[X] **BY E-MAIL:** I electronically served the above-described document on the following parties by electronically transmitting the foregoing to the e-mail addresses listed.

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I certify under penalty of perjury under the laws of the State of California that the above is true and correct. Executed at Sacramento, California on March 31, 2016.

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